IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: David B. DWYER	Group Art Unit: 3663
Serial No.: 10/650,008	Examiner: M. Luu
Filed: August 26, 2003	Confirmation No.: 6065

For: INTEGRATED FLIGHT MANAGEMENT AND TEXTUAL AIRCRAFT TRAFFIC CONTROL DISPLAY SYSTEM AND METHOD

Docket No.: H0004368-5507
Customer No.: 000128

REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 41.52

Appellant hereby submits this request for rehearing of the decision of the Board of Patent Appeals and Interferences, mailed March 17, 2008, for the subject patent application. Pursuant to 37 C.F.R. § 41.52, this request is being filed within two months of the mailing date of the decision.

I. INTRODUCTION

This is a request for rehearing under 37 C.F.R. § 41.52 of the decision of the Board of Patent Appeals and Interferences ("Board") dated March 17, 2008.

II. PARTICULAR POINTS MISAPPREHENDED AND/OR OVERLOOKED

The Board sustained the final rejection of Claims 1-12 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,181,987 (Deker et al.). In doing so, and as will now be explained, it is submitted that the Board misapprehended the clear and explicit teaching of Deker et al. and/or overlooked or ignored explicit language and an entire element recited in independent Claim 1.

A. Deker et al. Does Not Disclose a Processor Responsive to Textual Clearance Message Signals Representative of *the* Air Traffic Control Clearance Messages

In its decision, the Board repeatedly states that the processor (e.g., computer 2) receives data representative of an air traffic clearance control message signal. In support of this statement, the Board cites col. 4, ll. 26-30[1] and col. 5, ll. 9-13[2] of Deker et al. Appellant does not agree that these portions of Deker et al. disclose, or even remotely suggest, what the Board suggests. Specifically, while it is true that Deker et al. discloses a data link in operable communication with a processor via a data communication bus, and that the data link *may* receive air traffic control clearance messages, absolutely nowhere does Deker et al. disclose, either explicitly or inherently, that the processor receives data representative of an air traffic control clearance message. Rather, it at best teaches that the processor may receive a "message," via the communication bus, about an "event" requiring a diversion. However, Deker et al. clearly and unambiguously teaches that such events are indexed in the base of rules that are

[1] "These events are entered into the system either by means of the data link 15 with the ground for problems relating to the destination airport, air traffic control or weather conditions, or by means of the weather radar 9 for problems of weather, or by means of the FMS or the other electronic equipment of the aerodyne in the event of malfunction."

[2] "This screen 24 is also displayed when the computer has received a message, by means of the aircraft buses 5, about an event requiring a diversion, the message being then displayed in the message zone of the textual window 28 of the screen 24."

stored in a mass storage unit. See col. 4, ll. 9-25. Thus, what Deker et al. objectively teaches to the skilled artisan is that the so-called message the processor receives is supplied from the mass storage unit.

Nonetheless, even if it is *arguendo* assumed that the processor of Deker et al. does receive data representative of an air traffic clearance control message signal, nowhere does Deker et al. disclose that these data are textual clearance message signals representative of *the* air traffic control clearance messages. Indeed, it is believed to be quite telling that the Board, when reciting its finding of facts and delineating its proffered analysis, does not even once use this language. Rather, it chooses to use the much broader language "data representative of an air traffic control clearance message."[3] Appellant submits that there is good reason for this – the explicitly recited feature is not disclosed anywhere, either expressly or inherently, in Deker et al.

It is submitted that the rehearing should be granted, and the affirmance of the Examiner reversed, for at least the above reasons alone. Nonetheless, Appellant submits that there is at least one other reason to grant the rehearing and/or reverse the affirmance.

B. Deker et al. Does Not Disclose a Display Responsive to the Clearance Message Display Commands to Display *the* Textual Air Traffic Clearance Messages

In addition to the above, even if it is assumed that textual clearance message signals representative of air traffic control clearance messages are transmitted to, and received by, the processor of Deker et al., nowhere does Deker et al. disclose, either expressly or inherently, a display that is responsive to clearance message display commands to display *the* textual air traffic clearance messages. It is believed that this claim element was wholly overlooked by the Board. Indeed, nowhere does the Board address this claim element in its findings of facts or in its analysis. Moreover, the Board frames the entire issue of anticipation of independent Claim 1

[3] See, e.g., Ex parte David B. Dwyer, Application No. 10/650,008, Appeal No. 2007-2927 (B.P.A.I. March 17, 2008)("Board Decision") at 3 ("The processor also receives data representative of an air traffic control message signal (col. 5, ll. 9 to 13). The message relates to the clearance by air traffic control of the air craft (sic) to use a flight plan and as such is an air traffic control clearance message."), and at 4 ("This message necessarily concerns and thus is representative of the lack of clearance for a previous aircraft flight plan due to the occurrence of an event and is clearly representative of an air traffic control clearance.")

with respect to only a single claim element – the processor.[4]

Although much of Appellant's arguments in its Appeal Brief and Reply Brief did address the processor specifically, as the Board knows this was because the Examiner believed he could ignore explicitly recited features in the language used to define the processor. Even so, Appellant never admitted that the recited display was anticipated by Deker et al., and as such the anticipation rejection made by the Examiner cannot be affirmed without addressing this claim element. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (A single prior art reference can anticipate a claim only if each and every element recited in the claim is disclosed, either expressly or inherently, in the cited reference.)

As to this specific claim element, the Board Decision posits that the rendering of an EXPLAIN command, which allows a pilot to obtain further information about the alleged air traffic control message, is a clearance message display command. Board Decision at 5. However, this analysis completely overlooks language explicitly recited in independent Claim 1. In particular, independent Claim 1 further recites a display that is responsive to the clearance message display commands to substantially simultaneously display one or more images representative of the current aircraft flight plan and ***the*** **textual air traffic clearance messages**. Yet, as just noted, the Board's own analysis fails to state that any textual air traffic clearance messages are displayed in response to clearance message display commands, let alone ***the*** textual air traffic clearance messages of which the one or more textual clearance message signals representative of.

Appellant does admit that Deker et al., at col. 5, ll. 9-13, does teach that when the computer receives a message "about an event requiring a diversion," that the message is displayed in the message zone of a display screen. Consistent with the previously delineated points of misapprehension regarding this portion of Deker et al., there is no teaching whatsoever that the message is one or more textual clearance message signals representative of the air traffic control clearance messages.

[4] It is believed that the erroneous statement of the issue on appeal is alone sufficient to support agreement to this request. Appellant never framed the issue of anticipation on the basis of one element of independent Claim 1, but stated the issue was whether the claim in its entirety was anticipated.

III. CONCLUSION

In view of the foregoing, Appellant submits that a rehearing of the final rejection of Claims 1-12 should be granted, and such rehearing should find that the previous affirmance of the anticipation rejection is improper.

Respectfully submitted,

Dated April 30, 2008

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